IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION (P.D.) No.1613 OF 2002
AND
C.M.P.No.13762 OF 2002

Hussainy Begum ... Petitioner

-Vs-

R.Natarajan ... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

!For petitioner : Mr.P.Rathinadurai

^For respondent : No Appearance

:O R D E R

The above civil revision petition has been filed under Section 115 of the Code of Civil Procedure praying to set aside the order dated 9.8.2002 made in I.A.No.6794 of 2002 in O.S.No.2964 of 1998 by the learned XIV Assistant City Civil Judge, Chennai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner in the absence of any representation made on the part of the respondent, in spite of his name having been printed in the list, what comes to be known is that the respondent herein has filed the suit before the Court below for permanent injunction restraining the petitioner/defendant from in any manner interfering with his peaceful possession and enjoyment of the suit property bearing Door No.54, in S.No.14, Bharath Rajiv Gandhi Nagar, Kulathoor, Chennai-99 in an extent of 2200 sq.ft.

3. During the course of trial, the respondent/plaintiff got examined herself as P.W.1 in chief on 22.3.2001 and a patta is said to have been issued by the Headquarters Deputy Tahsildar, Saidapet in her favour regarding Suit Survey No.14 which has been marked as Ex.A.1 subject to objection by the petitioner/defendant. At this stage, the petitioner/defendant has filed a petition in I.A.No.6794 of 2002 under Rule 75

of the Civil Rules of Practice before the Court below praying to issue sub-poena to the office of the Headquarters Deputy Tahsildar, Perambur-Purasawalkam Taluk, Chennai, to produce the records relating to the patta issued in respect of the suit property at No.65, Kulathur village, comprised in Survey No.14 and to give evidence in respect thereof on averments such as that the said document produced by the plaintiff is a forged and fabricated one and that the respondent/ plaintiff has committed the offence punishable under Section 193 of the IPC; that Kolathur village wherein the suit property situates lies within Perambur-Purasawalkam Taluk since 1979 and she has also produced the patta issued in respect of the suit property even on 12.5.1986 by the Headquarters Deputy Tahsildar of Perambur-Purasawalkam Taluk; that it is expedient in the interest of justice that necessary proceedings are to be taken against the respondent/plaintiff including to file a complaint before the appropriate Court with respect to such false, forged and fabricated document produced in the judicial proceedings. Otherwise it would lead to serious consequences.

4. This petition filed by the petitioner/defendant has been resisted by the respondent/plaintiff on ground that Ex.A1 is a genuine one; that the Court has to decide the objection whether it is valid or whether it is sustainable or whether it has to be overruled and till such issue is decided, he cannot be branded as an offender; that the trial in the above suit is in the middle-way and until the Court decides all the issues and delivers its judgment, he cannot be treated as an offender; that it is always open to the petitioner/defendant to disprove the contents of Ex.A.1 by letting in such cogent, convincing and plausible evidence and in the absence of such a course of action, he cannot be hauled up or found fault or punished under any of the provisions of the IPC or any other law; that the application is premature since even the evidence of P.W.1 is not complete and would pray to dismiss the above application.

5. The Court below, having conducted an enquiry into the matter and having framed its own point for consideration that `whether a subpeona is to be issued as prayed for', would hold that the provisions of Rule 75 of the Civil Rules of Practice are not applicable to the prayer in the petition since Rule 75 deals with `production of documents in the custody of the Court' and the appropriate provision to be applied is Rule 76. The Court below would further observe that the petition is premature and that the plaintiff should be first provided with opportunity to prove his case and the question of summoning the Headquarters Tahsildar for the purpose of defendant's case would arise only when the case enters into the stage of examination of witnesses on the side of the defendant and would ultimately dismiss the above petition filed by the defendant.

6. Aggrieved, the defendant in the suit has come forward to file the above civil revision petition on grounds such as that the Court below has acted on surmises and erred in holding that summoning of the Headquarters Deputy Tahsildar and examining him as a witness is not required at this stage, which is not the case of the petitioner; that the Court below has lost sight of facts that the petitioner has taken out I.A.No.13031 of 2001 under Section 193 of the IPC r/w.Section 151 CPC to prosecute the respondent for producing

false and fabricated document before the Court and that such application is pending consideration and in the circumstances, the documents summoned are essential for proper consideration of the matter in issue; that the Court below ought to have taken note of the fact that such production of forged and fabricated document and relying upon the same as evidence in the judicial proceedings would undermine the majesty of the Court and that the Court should therefore nip the same at the bud to uphold its majesty and that the Court below has acted on erroneous assumption that the application has been filed to summon a document for relying upon the same in defence.

7. Since the notice sent to the respondent was returned as `not claimed', the service is held sufficient and his name is printed in the list. But, when the above matter was taken up for consideration on 2 4.9.2003, there was no representation offered on the part of the respondent and hence this Court is left with no choice but to proceed with the matter after hearing the learned counsel for the petitioner.

8. During arguments, the learned counsel for the petitioner would submit that the property is situated in Kolathur, but the plaintiff marked Ex.A.1, purported to have been issued by the Saidapet Taluk Magistrate and in Ex.A.1, neither the boundaries nor the adjoining survey numbers are mentioned; that the learned Magistraste has proceeded to observe that Rule 75 is not applicable to the facts of the case when Rule 75 deals with `production of records in the custody of offices other than Court'; that the learned Magistrate has further erred in observing that the petition is premature when the Honourable Apex Court has time and again held to nip it in the bud, the fraudulent litigation and in spite of an application filed by the petitioner praying to prosecute the respondent for producing false and fabricated document and the same is pending, the learned Magistrate has taken the petition so carelessly and on an erroneous view, has dismissed the petition.

9. The learned counsel for the petitioner would cite the judgment of the Honourable Apex Court delivered in S.P.CHENGALVARAYA NAIDU vs. JAGANNATH reported in AIR 1994 SC 853 wherein it has been held:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

On such arguments, the learned counsel for the petitioner would pray to allow the above civil revision petition.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the

petitioner, it is revealed that the dispute is regarding the issuance of the sub-poena to the office of the Headquarters Tahsildar, Perambur-Purasawalkam Taluk, Chennai to cause production of the records relating to the patta issued in respect of the suit property at No.65, Kolathur village comprised in S.No.14 and to adduce evidence in respect thereof, which the lower Court refused to issue mainly on two grounds, the first one being that instead of filing the petition under Rule 76 of the Civil Rules of Practice, which is the appropriate provision of law under which the petition should have been filed, the petitioner has chosen to file the same under Rule 75 of the Civil Rules of Practice which is dealing with `production of documents in the custody of the Court' and the second objection of the trial Court being that it is premature on the part of the petitioner to have approached the Court with an application of that sort seeking to issue the subpoena since at the time of examination of his witnesses, the petitioner could file the petition.

11. So far as the first objection of the lower Court is concerned, it is not the Section or Rule or provision of law, which is relevant for consideration but only the contents and prayer of the petition wherein the subject matter is discussed. The upper forums of law including that of the Honourable Apex Court, have, time and again held that just for the simple reason of misquoting the provision of law, the petitioner therein would not become dis-entitled to get the relief sought for and therefore in such circumstances, no importance need be attached to the wrong provision under which the petition has been filed but only the contents of the petition and the relief sought for are relevant for consideration.

12. Regarding the second reason assigned on the part of the trial Court to the effect that the plaintiff should be first provided with the opportunity to do his case and only then the question of summoning the Tahsildar for the purpose of the defendants' case would arise, is again a misnormer and an illusion entertained by the lower Court in the sense that according to the petitioner/defendant basically the case of the respondent/plaintiff rests in Ex.A.1 and therefore it has become incumbent on the part of the petitioner/defendant to disprove the contents of Ex.A.1 by letting in cogent, convincing and plausible evidence and in the absence of original documents, he may not be able to impress the Court upon the very basis of the suit filed by the respondent. In order to prove that the plaintiff has not approached the Court with clean hands and further more when ample opportunities are there for marking the documents, as a Court document at any time without waiting for the defendant to commence his evidence, it is always desirable to allow such an application issuing sub-poena summoning the Headquarters Deputy Tahsildar for causing production of the document in original and to adduce evidence. Since both the reasons assigned on the part of the lower Court having not been made on sound principles and on the acceptable line, the order passed by the trial Court suffers from inconsistency and infirmity and therefore in the above circumstances of the case, the only course that is open for this Court is to cause its interference into the fair and decretal order passed by the lower Court and hence the following order:

In result,

(i)The above Civil revision Petition succeeds and the same is allowed.

(ii)The fair and decretal order dated 9.8.2002 made in I.A.No.6794 of 2002 in O.S.No.2964 of 1998 by the learned XIV Assistant City Civil Judge, Chennai is hereby set aside.

Consequently, C.M.P.No.13762 of 2002 is closed.

Index: Yes
Internet: Yes

Rao

To

The Registrar,
City Civil Court,
Chennai.